

REMARKS

Entry of the foregoing and reconsideration of the subject application are respectfully requested in light of the amendments above and the comments which follow.

As correctly noted in the Office Action Summary, claims 1-39 were pending (with claims 20-28 and 37-39 being withdrawn from consideration). By the present response, claims 1, 8-9, 16 and 17 have been amended and claims 20-28 and 37-39 withdrawn. Claim 16 is amended only to correct a typographical error. Thus, upon entry of the present response, claims 1-39 remain pending (with claims 20-28 and 37-39 being withdrawn from consideration) and await further consideration on the merits.

Support for the foregoing amendments can be found, for example, in at least the following locations in the original disclosure: the original claims, and the specification, paragraphs [0006], [0015], [0021] and [0022].

ELECTION/RESTRICTION

In response to the Restriction Requirement forwarded by the Official Action dated March 8, 2004, Applicants hereby confirm the provisional election of Group I, including Claims 1-19 and 29-36 (drawn to an article) for prosecution in the above-identified application. This election is made with traverse. Nonelected claims 20-28 and 37-39 have been withdrawn pending reconsideration.

It is respectfully submitted that the subject matter of claims 1-64 is sufficiently related that a thorough search for the subject matter of any one group would necessarily encompass a search for the subject matter of the remaining groups.

Thus, it is respectfully submitted that the search and examination of the entire application could be performed without serious burden. MPEP §803 clearly states that "If the search and examination of an entire application can be made without serious burden, the Examiner must examine it on its merits, even though it includes claims to distinct or independent inventions" (emphasis added). It is respectfully submitted that this policy should apply in the present application in order to avoid unnecessary delay and expense to Applicants in duplicative examination by the Patent Office.

The Examiner is respectfully requested to reconsider and withdraw the Restriction Requirement and to examine claims 1-39 in this application.

DOUBLE PATENTING

Claims 1-19 and 29-36 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3, 11-29, 33, 42 and 46-51 of copending Application No. 11/123,122. Applicants note the provisional rejection and respectfully request that resolution of this rejection by submission of a terminal disclaimer or amended claims be deferred until the indication of allowable subject matter with respect to the other prior art rejections.

CLAIM REJECTIONS UNDER 35 U.S.C. §112

Claims 1-19 and 29-36 stand rejected under 35 U.S.C. §112, second paragraph, on the grounds set forth in paragraph 10 of the Official Action.

By the present response, applicants have amended claim 1 in a manner which addresses the above-noted rejection. Specifically, claim 1 now recites the

range of the oxygen in SiO_x and indicates that the intermediate polymer layer has a higher thickness relative to each of the first and second gas barrier coated carrier layers, and a higher stiffness relative to low density polyethylene. Reconsideration and withdrawal of the rejection is respectfully requested.

CLAIM REJECTIONS UNDER 35 U.S.C. §103

The rejection of applicants' claims as outlined in paragraphs 11-14 of the Official Action are improper as an obviousness rejection because each of the rejections has failed to establish a *prima facie* case of obviousness over independent claim 1.

To establish a *prima facie* case of obviousness, three criteria must be met including establishing a suggestion or motivation to modify the reference or to combine the teachings, establishing a reasonable expectation of success for the proposed modification or combination, and showing that the references teach or suggest all of the claimed features. See, MPEP §2142-43. Here, the combination of references cited by the Examiner fails to establish a motivation for the proposed combination and has not established a reasonable expectation of success for the proposed modification or combination. Accordingly, the rejection is improper and should be withdrawn.

Claim 1, the only independent claim at issue here, recites that the claimed transparent gas barrier packaging laminate comprises, amongst other things:

a first gas barrier coated carrier layer including a first gas barrier layer consisting of PECVD SiO_x coated onto a first polymer carrier layer, where x is from 1.7 to 2.0;

a second gas barrier coated carrier layer including a second gas barrier layer consisting of PECVD SiO_x coated onto a second polymer carrier layer, where x is from 1.7 to 2.0

The rejections under 35 U.S.C. §103(a) outlined in the Official Action variously cite to U.S. Patent No. 6,521,312 over Keiser (hereafter "Keiser") in view of EP 0 385 054 to Löfgren et al. to (hereafter "Löfgren et al.") and further in view of WO 99/19229 to Fayet et al. (hereafter "Fayet et al."). The Official Action at paragraphs 12-14 explains in detail the teachings of these references and the proposed combination. However, Applicant notes that the claimed PECVD SiO_x layer is still not obvious in view of the proposed combination of references.

Keiser is cited for showing some of the elements of the claim. *Löfgren et al.* is cited in the Official Action for providing a SiO₂ layer. However, as noted by the Examiner on page 12, *Keiser* in view of *Löfgren et al.* fails to teach that the SiO_x layer is deposited by PECVD technique. The Examiner then cites to *Fayet et al.* *Fayet et al.* deposits a SiOxCy layer and not a SiOx layer by PECVD. It is respectfully submitted that the disclosure in *Fayet et al.* is insufficient by itself to establish a *prima facie* case of obviousness.

First, it is not obvious that the SiOxCy layer of *Fayet et al.* and methods associated with depositing the SiOxCy layer would have been considered by one of ordinary skill in the art as a substitute material and deposition technique for the SiO₂ layer of *Löfgren et al.* For example, *Fayet et al.* discloses that a carbon-containing silicon oxide coating has superior oxygen and aroma barrier properties (see page 6, lines 13-15). In contrast, *Löfgren et al.* discloses that it is SiO₂ or silicon nitride (Si₃N₄) which provide a good gas and aroma barrier properties. See column 2, lines

25-27. Thus, this aspect of the references relates to complete different material. It is not clear that one of ordinary skill in the art would have looked to a reference depositing SiOxCy for teachings and possible modifications related to SiO₂ and Si₃N₄, as these are different material.

Second, in *Fayet et al.*, the SiOxCy layer is deposited by PECVD to obtain the desired form of the SiOxCy material. In contrast, *Löfgren et al.* forms his SiO₂ or Si₃N₄ layer by a vacuumed up position or so-called hot stamp technique. See column 3, lines 23-24. One of ordinary skill in the art appreciates that different materials deposited by different techniques have different properties.

For example, the substitution of techniques requires more than the ordinary level of skill in extrapolating the effects upon the material properties. Also for example, substitution of techniques does not necessarily result in the different materials having the same properties. Thus, these effects are neither obvious nor is there a reasonable expectation of success that the required substitution would be successful.

In support of the differences between the claimed PECVD SiOx and the disclosure in *Löfgren et al.*, Applicants refer to para [0022] of the present application, where advantageous properties and results of using a material such as PECVD SiOx are stated. These properties are different from the SiO₂ material disclosed in *Löfgren et al.*. Further comments on the SiO₂ material in *Löfgren et al.* and the difference from the PECVD SiOx layers can be found in paragraph [0006] of the present application.

It is respectfully asserted that it is not all together obvious, and does not rise to the level of a *prima facie* case of obviousness for the purposes of a rejection

under 35 U.S.C. §103, that one of ordinary skill in the art would have combined the PECVD technique for depositing SiOxCy materials as disclosed in *Fayet et al.* as a substitute deposition technique for the SiO₂ materials disclosed in *Löfgren et al.*

From the above, it is respectfully asserted that a) there is no suggestion or motivation to modify the references or to combine the teachings in that none of the references provide such motivation or teaching, and b) it is respectfully asserted that there is no reasonable expectation of success for the proposed modification or combination for the reasons stated above. Therefore, for at least the above-noted reasons, the rejection is improper as an obviousness rejection and reconsideration and withdrawal is respectfully requested.

Finally, at best the proposed combination is based on a "reasonable to try" construction and is not based in motivation found within the references or within other cited prior art. For at this further reason, the rejection is improper and should be withdrawn.

For all the above-noted reasons, reconsideration and withdrawal of the rejection is respectfully requested.

CONCLUSION

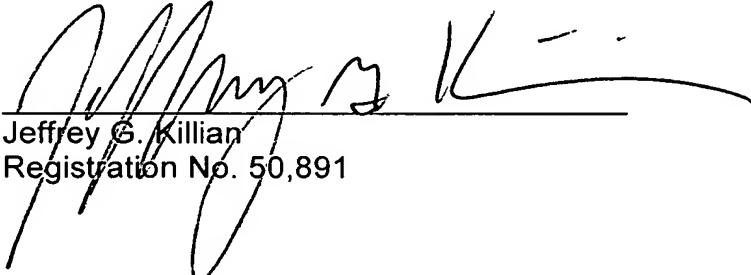
From the foregoing, further and favorable action in the form of a Notice of Allowance is earnestly solicited. Should the Examiner feel that any issues remain, it is requested that the undersigned be contacted so that any such issues may be adequately addressed and prosecution of the instant application expedited.

Respectfully submitted,

BUCHANAN INGERSOLL PC

Date: September 29, 2005

By:


Jeffrey G. Killian
Registration No. 50,891

P.O. Box 1404
Alexandria, Virginia 22313-1404
(703) 836-6620